

**Opinion No. 98-006**

Mr. David Smith  
Chief Administrative Officer  
County Administration Building  
301 West Jefferson, 10th Floor  
Phoenix, Arizona 85003

**SYLLABUS:**

A deputy constable serves at the pleasure of, and under the direction and control of, the appointing constable. If a constable leaves office, the deputy remains in office unless dismissed by the new constable. The appointment is subject to the approval of the board of supervisors. A constable and any deputy are required by A.R.S. § 22-131 to attend a training course designed to instruct on the duties of office. If the constable or deputy is required to perform peace officer functions, Arizona Peace Officer Standards and Training Board (AZ. P.O.S.T.) certification is required.

Dear Mr. Smith:

Upon the resignation of a constable, several issues arose concerning the status of a deputy constable. Specifically, you ask:

1. What is the statutory relationship between constable and deputy constable, relating to employment and duties? What is the proper processing of a deputy to receive the powers and duties of the constable?
2. When an “appointing” constable (if, there need be one) is no longer in office, what happens to a deputy appointed by that constable? Does the appointment survive retirement of the constable and remain with the office? With the department overall? May it be transferred to another constable and, if so, what would be required to formalize such a transfer?
3. Must the Board of Supervisors approve appointments of deputy constables?
4. What are the statutory requirements regarding certifications, qualifications and duties of a deputy constable?

**PERTINENT STATUTORY PROVISIONS**

The answers to many of your questions are addressed in statute and, accordingly, the discussion begins here.

### **ARTICLE 3. CONSTABLES**

#### **A.R.S. § 22-131. Powers and duties**

A. Constables shall attend the courts of justices of the peace within their precincts when required, and within their counties execute, serve and return all processes and notices directed or delivered to them by a justice of the peace of the county or by competent authority. In addition to any other provision of law these duties may be enforced by the presiding judge of the superior court in the county, including the use of the power of contempt.

B. The Arizona law enforcement officer advisory council shall provide a training course for constables which will be provided at least semiannually. Constables shall be required to attend the next available training course subsequent to their employment.

C. Constables, with the consent of and at salaries fixed by the board of supervisors, may appoint deputies, stenographers, clerks and assistants necessary to conduct the affairs of their offices. The appointments shall be in writing and filed in the office of the county recorder.

D. The provisions of law relating to sheriffs, so far as applicable, shall govern the powers, duties and liabilities of constables.

#### **A.R.S. § 38-461. Appointment and recording of appointment**

B. Deputies, assistants and subordinate officers whose appointments are not otherwise provided for by law shall be appointed by the officer or body to whom they are subordinate.

C. The appointment of deputies and assistants by state officers, boards or commissions shall be in writing and filed in the office of the secretary of state. The appointment of deputies, assistants or clerks by county officers or boards shall, except as

otherwise provided, be in writing and recorded in the office of the county recorder.

A.R.S. § 38-462. Powers and duties of deputies

A. Unless otherwise provided, each deputy of a state or county officer possesses the powers and may perform the duties prescribed by law for the office of the principal.

B. When the official name of any principal officer is used in law conferring power, or imposing duties, liabilities or prohibitions, it includes the officer's deputies.

A.R.S. § 38-232 provides that the oath of office shall be taken, subscribed and filed within ten days of notice of appointment.

**CONSTABLE-DEPUTY RELATIONSHIP**

Your first two questions concern the statutory relationship between a constable and the appointed deputy, and the effect on the deputy when the appointing constable resigns from office. The issue is whether resignation of the principal (the constable) extinguishes the appointment of the deputy. In our opinion, the appointment continues along with the powers and duties conferred by the initial appointment. The appointment exists for the balance of the term of office of the constable under whom the deputy served. This does not mean, however, that the deputy's appointment cannot be terminated if that is the intent of the incumbent constable. As expressed in A.R.S. § 38-461, deputies shall be appointed by the officer to whom they are subordinate. Unlike deputy county attorneys or deputy sheriffs or other positions in the county service which are merit protected, deputy constables, by board resolution, are unclassified and as such, are subject to dismissal without cause. Thus, at any time during the term of their appointment, including when a principal leaves office, the deputy is subject to termination by the incumbent constable.

If, upon appointment of a new constable, a deputy is to continue to serve in the same justice precinct, the formality of reappointment is unnecessary. If, on the other hand, a deputy is transferred to a different precinct, a new appointment with the attendant formalities is required. A deputy constable is subject to the instruction and control of a principal. See *State v. Ovens*, 4 Ariz. App. 591, 422 P.2d 719 (1967). Thus, a deputy may not simply be assigned to a department, but must serve under a duly-qualified constable.

To formalize a change in appointment, the principal must make the appointment in writing. The deputy may subscribe the oath of office and file the oath in the office of the county recorder. A formal ceremony is not required. It should be noted that failure to take direct action to effect a change in the appointment, on the other hand, poses no threat to the status or authority of the person serving as deputy. In *State v. Stago*, 82 Ariz. 285, 312 P.2d 160 (1957), a criminal defendant challenged his conviction for obstructing a public officer on the ground that the appointment of the assaulted deputy sheriff was not recorded in the office of the county recorder or approved by the board of supervisors. The court held that acceptance by the board of supervisors of a bond executed by the deputy which was recorded with the county recorder, sufficiently evidenced board consent. Further, even though the written appointment was not recorded, the deputy's acts were held valid as those of a *de facto* officer. Statutory requirements regarding form and formality of appointments have been held to be directory, not mandatory. *Gulbrandson v. Town of Midland*, 72 S.D. 461, 36 N.W.2d 655 (1949).

#### **BOARD APPROVAL OF APPOINTMENTS IS REQUIRED**

A.R.S. § 22-131(C) provides that:

"Constables, with the consent of . . . the board of supervisors, may appoint deputies . . . ."

In *Graham v. Lockhart*, 53 Ariz. 531, 91 P.2d 265 (1939), the court held that a requirement that an appointment is effective only "by and with the advice of the senate" means what it says, and that actual consent is required. Accordingly, the answer to your third question is that board approval is required for all deputy constable appointments.

#### **CERTIFICATION, QUALIFICATION AND DUTIES OF DEPUTY CONSTABLES**

A.R.S. § 22-131(B), requires that constables attend a specialized training program:

The Arizona law enforcement officer advisory council shall provide a training course for constables which will be provided at least semiannually. Constables shall be required to attend the next available training course

subsequent to their employment.<sup>1</sup>

This training relates only to non-peace officer duties. Arizona law does not require a constable to be certified by the Arizona Peace Officers Standards and Training Board (Az P.O.S.T.) in order to hold the office of constable.<sup>2</sup> Az. P.O.S.T. certification is an option, however, and a hiring preference may be awarded to individuals with this certification. A deputy constable certified by Az. P.O.S.T. may perform the duties of a peace officer in addition to the non-peace officer duties. The minimum duties of the office (A.R.S. § 22-131) are limited to execution, service and return of process and delivery of notices in the precinct.

### **CONCLUSION**

A deputy constable serves at the pleasure of, and under the direction and control of, the appointing constable. If a constable leaves office the deputy remains in office unless the new constable terminates the appointment. The appointment is subject to approval of the board of supervisors. A constable, and hence the deputy, is required by A.R.S. § 12-131 to attend a constable training course designed to instruct on the performance of the required duties. If the constable or deputy is required to perform peace officer functions, Az. P.O.S.T. certification is necessary.

Very truly yours,

RICHARD M. ROMLEY  
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DIVISION OF COUNTY COUNSEL

Christina Peterson-Sargeant  
Deputy County Attorney

Approved by the Opinion Review  
Committee of the Maricopa County  
Attorney's Office the 21st day of April, 1998.  
REQUEST NO. 98-CA04

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<sup>1</sup>In 1994, the Arizona Law Enforcement Officer Advisory Council was renamed and is now identified as the Arizona Peace Officer Standards and Training Board (Az. P.O.S.T.) See A.R.S. § 41-1821.

<sup>2</sup>Nor does the law impose different or additional requirements on deputies beyond what is required of constables.